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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

STRUCTURAL STEEL FABRICATORS,
INC.,

Plaintiff and Appellant,

v.

LOS ANGELES SUPERINTENDENT OF
SCHOOLS et al.,

Defendants and Respondents.

B146340
(Super. Ct. No. VC031794)

APPEAL from an order of the Superior Court of Los Angeles County. Thomas McKnew, Judge. Affirmed.

Ralph T. Evans for Plaintiff and Appellant.

Lewis, D'Amato, Brisbois & Bisgaard and Lawrence N. Halperin for Defendants and Respondents.

Structural Steel Fabricators filed this action for damages against a public educational agency and other defendants. The trial court sustained the agency's demurrer to the complaint without leave to amend on the ground Structural Steel Fabricators failed to comply with the claims presentation requirements of the Tort Claims Act.¹ We affirm.

FACTS AND PROCEEDINGS BELOW

The first amended complaint alleges as follows:

In March 1999, plaintiff Structural Steel Fabricators, Inc. ("SSF") and defendant Pacific Building Industries ("PBI") entered into an agreement under which SSF agreed to perform structural steel work in exchange for \$276,260. SSF claims PBI still owes \$76,266.40 plus interest on the contract. In or about February 2000, SSF recorded a mechanic's lien for this amount in which it identified The O'Donnell Group as the owner of the real property where SSF performed the work because PBI had told SSF The O'Donnell Group owned the property.²

In May 2000, SSF filed an action for foreclosure of mechanic's lien and common counts against PBI and The O'Donnell Group.³ In June 2000, SSF learned defendants Los Angeles Superintendent of Schools and Los Angeles County Board of Education dba Los Angeles County Office of Education, a Public Educational Agency (collectively, "LACOE"), have some ownership interest in the property where SSF performed the work for PBI. A party not identified by SSF deeded the property to LACOE before completion of the construction job. In July 2000, SSF filed a first amended complaint naming LACOE instead of The O'Donnell Group in the causes of action for foreclosure of mechanic's lien and common counts.

¹ Government Code section 900 et seq.

² The mechanic's lien is attached to the complaint and incorporated therein by reference.

³ The complaint and first amended complaint also allege a breach of contract cause of action against PBI.

LACOE demurred to the first amended complaint on the ground SSF failed to comply with Government Code section 900 et seq. (the California Tort Claims Act) because it did not file a claim with LACOE before it filed this action for damages. The trial court sustained the demurrer without leave to amend.

In November 2000, SSF obtained a default judgment against PBI in the amount of \$76,266.40 plus interest and costs.

DISCUSSION

I. STANDARD OF REVIEW

In reviewing an order sustaining a demurrer without leave to amend, we accept as true the properly pleaded factual allegations of the complaint and consider matters which may be judicially noticed.⁴ The allegations of the complaint must be liberally construed with a view to attaining substantial justice among the parties.⁵ We review the complaint de novo to determine whether the trial court erred in sustaining the demurrer.⁶

II. SSF FAILED TO GIVE LACOE NOTICE OF ITS CLAIMS BEFORE IT FILED THIS ACTION FOR DAMAGES.

SSF did not file a claim against LACOE pursuant to Government Code section 900 et seq. before it brought this action for foreclosure of mechanic's lien and common counts. SSF contends actions relating to mechanic's liens are not subject to the claims presentation requirements of the Tort Claims Act.

⁴ *Thompson v. County of Alameda* (1980) 27 Cal.3d 741, 746; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

⁵ Code of Civil Procedure section 452; *King v. Central Bank* (1977) 18 Cal.3d 840, 843.

⁶ *Cantu v. Resolution Trust Corporation* (1992) 4 Cal.App.4th 857, 879.

With certain exceptions, the Government Code requires a plaintiff to file a claim against a local public entity before the plaintiff may file an action for money or damages against the entity.⁷ These claims presentation requirements, set forth at Government Code section 900 et seq., are commonly referred to as the California Tort Claims Act. Notwithstanding the name, these “requirements are not limited to tort claims, but extend also to claims for money or damages based on contract,” including claims based on a public entity’s “failure to pay for goods or services rendered.”⁸ The purpose of these requirements is to notify a public entity of imminent legal action and to provide an opportunity for the entity to investigate, evaluate and settle a claim.⁹

SSF contends this action for damages is not subject to the claims presentation requirements because it falls within one of the exceptions set forth in Government Code section 905. That section exempts “[c]laims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics’, laborers’ or materialmen’s liens.”¹⁰ LACOE argues this exception applies only to stop notices or other lien procedures which provide the public entity with notice of the impending lawsuit.

As set forth above, SSF alleges LACOE became the owner of the property prior to completion of the construction job. Mechanic’s liens are not available on public works projects.¹¹ Civil Code section 3100 defines a “public work” as “any work of improvement contracted for by a public entity.” “The only statutory remedies available to claimants . . . on public works are stop notices [Civil Code section 3179 et seq.] . . .

⁷ Government Code sections 905 and 945.4.

⁸ *Baines Pickwick Limited v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 304-305.

⁹ *Turner v. State of California* (1991) 232 Cal.App.3d 883, 888; *C.A. Magistretti Company v. Merced Irrigation District* (1972) 27 Cal.App.3d 270, 276.

¹⁰ Government Code section 905, subdivision (b).

¹¹ Civil Code section 3109.

and actions on payment bonds [Civil Code section 3247 et seq.]. . . .”¹² “An unpaid claimant who contributes labor, material, or equipment to a work of improvement secures the claim by using a stop notice to freeze construction funds in the hands of the public entity.”¹³ A plaintiff must file a stop notice with a public entity before it may file an action for enforcement of the stop notice.¹⁴

In *C.A. Magistretti Company v. Merced Irrigation District*, the Court of Appeal reviewed the exception SSF relies on and concluded: “While it is true that subdivision (b) of section 905 contains broad language, the exception articulated obviously pertains to a stop notice or to a notice of lien which lays the foundation for the lawsuit which is subsequently filed and which gives the public entity and its responsible officer or employee actual notice of the facts and theory upon which the lawsuit is predicated.”¹⁵ The plaintiff in that case, a subcontractor on a public works project, filed a “claim of lien” under former Code of Civil Procedure section 1192.1 against the public entity alleging the contractor had not paid the company for its work and requesting the entity “withhold sufficient moneys from payments due to the prime contractor to satisfy the claim.”¹⁶ The plaintiff later filed an action for negligence against members of the public entity’s board of directors alleging the members failed to obtain a statutory labor and material bond. The appellate court found the plaintiff failed to comply with the claims presentation requirements of the Tort Claims Act because the claim of lien did not

¹² Hunt, *California Mechanics’ Liens and Related Construction Remedies* (Cont.Ed.Bar 3rd ed. 1998) State and Local Public Works, section 4.3, page 209.

¹³ Hunt, *California Mechanics’ Liens and Related Construction Remedies*, *supra*, section 4.5, page 210.

¹⁴ Civil Code sections 3103 and 3183.

¹⁵ *C.A. Magistretti Company v. Merced Irrigation District*, *supra*, 27 Cal.App.3d at page 275.

¹⁶ *C.A. Magistretti Company v. Merced Irrigation District*, *supra*, 27 Cal.App.3d at page 273.

provide the defendants with notice of the facts and theory on which the lawsuit was based.¹⁷

Citing *C.A. Magistretti Company v. Merced Irrigation District*, Bernard Witkin concluded: “Claims against local entities in connection with mechanic’s liens and similar liens are expressly excepted from the operation of the general claims procedure by Govt.C. 905(b). The exception applies only to a stop notice or notice of lien under former C.C.P. 11921.1 (now C.C. 3181, 3184, 3185, 3187, 3193, 3196) that lays the foundation for a lawsuit based on the facts and legal theory of the notice.”¹⁸

Based on the foregoing, it is clear a plaintiff may not bring an action for damages against a public entity for services rendered on a work of improvement without first providing the entity with notice. SSF did not provide LACOE with notice of its claims before it filed this action for foreclosure of mechanic’s lien and common counts. Instead, SSF gave notice to the former property owner, The O’Donnell Group, when it recorded the mechanic’s lien. Filing a claim with the wrong entity does not satisfy the notice requirements of the claims presentation provisions.¹⁹

SSF argues “it is the government [LACOE] that, probably, had full knowledge of all the subcontractors (since they bought a property under construction) while the subcontractors were kept in total ignorance of the government entity’s late ownership interest. . . . Allowing a ‘stealth’ relationship like that, a ‘secret’ deed during a construction, to affect the rights of the subcontractors, could give rise to some creative frauds upon subcontractors and materialmen.” We are not persuaded by this argument in the context of this case. The mechanic’s lien form clearly states a claimant may obtain

¹⁷ *C.A. Magistretti Company v. Merced Irrigation District*, *supra*, 27 Cal.App.3d at pages 273, 275-276.

¹⁸ 3 Witkin, California Procedure (4th ed. 1996) Actions, section 234, page 303.

¹⁹ See, e.g., *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702 (action against office of education barred where the plaintiff filed a tort claim with the county board of supervisors); *Johnson v. San Diego Unified School District* (1990) 217 Cal.App.3d 692 (action against school district barred where the plaintiff filed a tort claim with the state board of control).

the name of the property owner from the County Assessor's Office where the real property is located. SSF apparently failed to check public records to ensure it named the correct party. SSF has not alleged LACOE did anything to prevent SSF from finding out LACOE owned the property or to frustrate an attempt by SSF to file a claim.²⁰

Because SSF failed to give LACOE notice of its claims before it filed this action for damages, the trial court correctly sustained LACOE's demurrer to the first amended complaint without leave to amend.

DISPOSITION

The order sustaining LACOE's demurrer to SSF's first amended complaint without leave to amend is affirmed. Respondents are awarded their costs on appeal.

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JOHNSON, J.

We concur:

LILLIE, P.J.

WOODS, J.

²⁰ See *Fredrichsen v. City of Lakewood* (1971) 6 Cal.3d 353, 355-356, 360 (the city was estopped to assert the plaintiff failed to comply with the claims presentation requirements after the plaintiff requested a claim form from the city and the city represented a private company was responsible for maintenance of the sidewalk on which the plaintiff fell).